

BEFORE THE GOVERNING BOARD
NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RACHELLE MORGAN-LEWIS,

Respondent.

OAH No. 2011031402

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Moss Landing, on April 18, 2011.

Kevin R. Dale, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the North Monterey County Unified School District (District).

Respondent Rachelle Morgan-Lewis represented herself.

The record closed on April 18, 2011.

SUMMARY

The Governing Board of the North Monterey County Unified School District decided to reduce or discontinue particular kinds of services provided by certificated employees for the 2011-2012 school year for financial reasons. The decision was not related to the competency and dedication of the employees whose services were proposed to be reduced or eliminated. Although a competency criterion was invalid, implementation of the Resolution was not affected. The selection process otherwise complied with Education Code requirements.

FACTUAL FINDINGS

1. Sergio Montenegro filed the Accusation in his official capacity as Superintendent of the District.
2. Respondent Rachelle Morgan-Lewis is a certificated employee of the District.

3. On March 10, 2011, the Governing Board of the District adopted Resolution No. 2010-1119, in which the Board resolved to reduce or discontinue certain particular kinds of services (PKS) for the 2011-2012 school year and directed the Superintendent or his designee to send notice to all employees whose positions may be affected by the action.

The reduction of services is as follows:

Elementary Classroom Instructional Services	
Multiple Subject Teaching Services - Grades K-6	3.0 FTE
High School Classroom Instructional Services	
Biology Teaching Services	1.0 FTE
Social Science Teaching Services	1.0 FTE
Special Education Classroom Instructional Services	
Special Education Teaching Services	1.0 FTE
Alternative Education Classroom Instructional Services	
Alternative Education Teaching Services	1.0 FTE
Other Positions	
Migrant Education Teaching Services	2.00 FTE
Total:	9.0 FTE

4. On March 14, 2011, Superintendent Montenegro mailed written notice to 19 certificated employees that it had been recommended that notice be given them that their services would not be required for the 2011-2012 school year. Many of the noticed employees, including Respondent, filed timely requests for hearing, and an Accusation was filed and served. All of the noticed employees who requested a hearing filed a notice of defense, except Respondent.

5. Prior to the hearing, all of the employees who filed notices of defense withdrew them.

6. At hearing, District objected to proceeding because Respondent had not filed a notice of defense. Respondent explained that she had been unclear about how to answer the questions stated in the notice form. She attempted to obtain help from the Association of California School Administrators, but was unsuccessful. District acknowledged that it had not been prejudiced by Respondent's failure, was aware of the issues she would raise and was ready to proceed.

In the interest of fairness and because there was no prejudice to the District, the motion to disallow Respondent's participation was denied. Government Code section 11506, subdivision (c), provides in pertinent part: "The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing"

7. The Resolution contains competency criteria to be used to determine whether a senior employee is entitled "bump" (replace) a junior employee. The District has a position entitled instructional coach. The instructional coach position is a type of alternative teaching assignment for teachers. Among other duties, the coaches present professional development training and then go into classrooms and debrief the teachers about what they observe. The District describes the position as "at will." It is filled through a competitive process that includes a minimum level of training and experience and an interview.

The Resolution contains the following competency criteria for the instructional coach position:

In order for an employee to be eligible for reassignment to an Instructional Coach position held by an employee with less seniority, the senior employee must be both credentialed and competent to render the service currently being performed by the junior employee. For purposes of implementing this Resolution, a more senior employee is defined as competent for reassignment into an Instructional Coach position currently held by a more junior employee if he or she currently possesses a clear or preliminary credential in the subject matter, has special training and experience to provide those services, and has at least one (1) year of experience within the preceding three (3) years serving in the assignment for the District.

8. The District's written job description of the instructional coach position sets out the job's functions and qualifications. Essential functions of the position include "Provide support and assistance to school site teachers in the implementation of the District's

Instructional Programs including the pacing guides and the periodic assessments in all content areas” and “Deliver professional development to groups of teachers as needed by sites.” The required qualifications include “Experience in collaborative planning and delivery of differentiated staff development to classroom practitioners.” Desirable qualifications include “Prior content coaching experience.”

9. Jamie Marantz is the District’s Assistant Superintendent of Curriculum and Instruction. She was directly involved in hiring the present instructional coach, Bridget Fitzgerald. The hiring process was extensive. First, the position was posted. Then, there was a “paper cut” of applicants based upon written materials that the applicants provided. The committee was looking for people with extensive training and experience in coaching teachers.

10. Respondent is presently an elementary school principal. She has been released from that position and been reassigned to an elementary classroom teaching position based upon her multiple subject credential. Respondent’s position on the seniority list causes her to fall within the three FTE positions slated for reduction; therefore, she received a preliminary notice.

11. Respondent is senior in position to Fitzgerald and believes that the competency criteria were written so as to protect Fitzgerald’s job and prevent Respondent “from even applying.” Respondent objects primarily to the portion of the criteria that defines competency as least one year of experience in the assignment within the preceding three years. She correctly points out that this prevents her from bumping into the position.

12. Respondent also represents that she is qualified to be an instructional coach by virtue of her experience as a principal and training she has received in coaching. She, however, presented no evidence other than her own very brief testimony about her education, training, and experience. On this record it cannot be determined whether Respondent is qualified for the position of instructional coach.

13. No certificated employee junior in seniority to Respondent is being retained by the Board to perform services that Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District has therefore established jurisdiction for this proceeding as to Respondent.

2. When a district seeks to disregard seniority order in a layoff proceeding, it bears the burden to prove that more senior employees do not have the necessary training or experience. (*Davis v. Gray* (1938) 29 Cal.App.2d 403, 408; *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 566-567.) In this matter, the District established appropriate competency requirements of a credential and special training and experience for the position of instructional coach. The third criterion, however, is too narrowly drawn.

The court in *Duax* approved the standard of one year of experience in ten years. More recently, the court in *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 142, suggested that one year within the past five years is valid. But the analysis in both cases focuses on the minimum level of experience needed to competently teach the subject, in contrast to a time period that would enable the selection of the most recently hired, lowest paid, or “best” teacher available. And the *Duax* court approved one year in ten by contrasting it to one in the last two or three years: a standard which the court deemed “too narrowly defines competency.” Accordingly the criterion here of working in the position for one year in the last three shall be invalidated.

3. Respondent argues that the competency criteria were unfair, and as stated above, she is correct as to one of the criterion. This does not change the outcome for Respondent, however, as she did not demonstrate that she has the training and experience required by the District for the instructional coach position. Accordingly, the District may serve her with a final layoff notice.

4. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees in nine full-time equivalent positions due to the reduction or discontinuation of particular kinds of services. The decisions made relate solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949.

5. All contentions made by Respondent not specifically addressed above are found to be without merit and are rejected.

ORDER

1. Notice may be given to Respondent Rachelle Morgan-Lewis that her services will not be required for the 2011-2012 school year because of the reduction or discontinuation of particular kinds of services.

2. The following competency criterion for the position of instructional coach is invalidated: “at least one (1) year of experience within the preceding three (3) years serving in the assignment for the District.”

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings